IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

TUESDAY, THE 19TH JUNE 2007 / 29TH JYAISHTA 1929

CRP.No. 106 of 1996(I)

RCA.154/1991 of RENT CONTROL APPELLATE AUTHORITY, THRISSUR
RCP.93/1989 of RENT CONTROL COURT,THRISSUR

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REVN. PETITIONER/PETITIONER:

MANI, S/O CHALISSERY PYLOTH,
CHALAKOTTUKARA DESOM,
TRICHUR VILLAGE, TRICHUR TALUK.

BY ADV. SRI.V.O.JOHN
SRI.V.R.JAYADEVAN
SRI.JIMMY JOHN
SRI.K.J.ANTONY

RESPONDENTS/RESPONDENTSIN RCA/RESPONDENTS 1&2 IN RCP:

1. V.T.RAJKANI NADAR, S/O VEERACHAMI THANKAPPA NADAR, WARD NO.V, SHED NO.273, EAST FORT, THRISSUR -5 (DIED)*

2. ROSY, W/O LATE CHAKKARAMAKKEL PORINCHU, METTISSERY VILLAGE, MELLANKARA DESOM, THRISSUR TALUK.

3. MERCY, D/O DO. DO. DO.

4. JANCY, D/O DO. DO. DO.

5. JOJO, S/O DO. DO. DO.

6. BIJU, S/O DO. DO. DO.

7. SIJU, S/O DO. DO. DO.

*ADDL. RESPONDENTS 8-15 IMPLEADED

8. SAROJA (WIFE), AGED ABOUT 70, WARD NO.V, SHED NO.273, EAST FORT, THRISSUR - 5.

9. Dr. USHA (DAUGHTER), AGED ABOUT 49, DO. DO.

10. ANANDI (DAUGHTER), AGED ABOUT 46, DO. DO.

11. Dr. THANKARAY (SON, AGED ABOUT 46, DO. DO.

12. JAYARAJ (SON), AGED ABOUT 43, DO. DO.

13. SUGANTHA (DAUGHTER), AGED ABOUT 40, DO. DO.

14. PREMA (DAUGHTER), AGED ABOUT 38, DO. DO.

15. MANESWARI (DAUGHTER), AGED ABOUT 51, DO. DO.

Impleaded as per order dt. 4.7.06 on Ias 328/05 & 329/05

BY ADV. SRI.N.P.SAMUEL
SRI.SIBY MATHEW

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 19/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

J.B.Koshy & K.P.Balachandran, JJ.

C.R.P.No. 106 of 1996

ORDER

Balachandran, J.

The landlord, who was the petitioner in R.C.P. No.93/89, on the file of the Rent Control Court, Thrissur, seeking for eviction of the respondents under Sections 11(2)(b) and 11(4)(i) of the Kerala Buildings (Lease and Rent Control) Act, 1965, is the petitioner herein. The rent control petition filed by him was allowed by the Rent Control Court both under Sections 11(2)(b) and 11(4)(i) of the Act. The tenant/first counter petitioner filed R.C.A.No.154/91 challenging the eviction ordered under Sections 11(2)(b) and 11(4)(i) of the Act. The appeal was allowed in part, confirming the eviction ordered under Section 11(2)(b) of the Act, but reversed the order of eviction granted under Section 11(4)(i) of the Act. Hence, this revision at the instance of the landlord.

2. The first counter petitioner/tenant died during the pendency of this revision and his legal representatives are additional respondents 8 to 15. The second counter petitioner died even while the appeal was pending before the appellate authority and his legal representatives are additional respondents 3 to 7.

3. It is vehemently contended by the learned counsel for the petitioner/landlord that despite report of the Commissioner, which showed that the second counter petitioner was conducting business in the scheduled building exclusively by himself, the Rent Control Appellate Authority has not accepted the case of sub letting of the scheduled building by the first counter petitioner to the second counter petitioner in the rent control petition. The appellate authority has found fault with the order of the Rent Control Court on the ground that the trial court came to the conclusion that the premises had been sub let to the second

counter petitioner and ordered eviction under Section 11(4)(i) of the Act, basing mainly on the Commissioner's Report. The second counter petitioner, who is alleged to be the sub tenant, has supported the case of the landlord, as according to him, he has been put in possession of the premises by the first counter petitioner in the year 1972 on a monthly rental of Rs.250/-. The appellate authority has further observed that when the Commissioner visited the property initially, the second counter petitioner alone was found in the premises and he was then carrying on the business in omelet. Exhibit C1 commission report also revealed that the key of the said premises was handed over by the second counter petitioner. An explanation was offered by the first counter petitioner before the Rent Control Court that at the time when he had gone to fetch his counsel, the second counter petitioner had trespassed into the premises. The said explanation was rejected by the

Rent Control Court, as the first counter petitioner had not filed any complaint in relation to the breaking open of the building and having illegal entry into the building by the second counter petitioner. It was for the reason that the second counter petitioner did not produce any record to show that he was having license from the Municipality to conduct the business and also PFA license, the appellate authority found that the second counter petitioner was not having possession of the scheduled premises and he is not conducting business therein. The appellate authority also found that the first counter petitioner was having license in his name. However, at the time when the matter was argued before us, the learned counsel for the petitioner produced before us, for perusal, copy of the common judgment in A.S.Nos.274/95 and 275/95 filed by the first counter petitioner against the legal representatives of the second counter petitioner, as the second counter

petitioner had by then passed away.

4. It is seen from the copy of the judgment so produced that the first counter petitioner filed O.S.No.864/86 for a decree of permanent prohibitory injunction against Porinchu, the predecessor of the second counter petitioner from creating labour disputes in the flour mill situated in the scheduled building alleging the said mill to be run by him and O.S.No.1062/86 against the Thrissur Municipality and Porinchu, the defendant in O.S. No.864/86 for a decree of permanent prohibitory injunction restraining the Municipality from giving electric connection to the flour mill in the scheduled building at the request of Porinchu, the second defendant, who is the second counter petitioner in the rent control petition. Both the suits were dismissed by the trial court and A.S.Nos.274/95 and 275/95 filed by the first counter petitioner in the rent control petition were also dismissed finding that he is not in

possession of the scheduled building and that the second counter petitioner is in actual physical possession of the scheduled building and he cannot be restrained from obtaining electric connection on his application.

5. The learned counsel for the respondents has no case that the said judgment in appeal is further challenged before this Court. Hence, as matters stand, there is a valid decree against the first counter petitioner finding that he is not in possession of the scheduled building and the second counter petitioner in the rent control petition is in possession of the scheduled building. The first counter petitioner has no explanation as to how the second counter petitioner is in occupation of the scheduled building, conducting business therein, if at all he was not being inducted into the scheduled building as a sub tenant by him, as contended by the second counter petitioner. Hence, we are of the view that the finding of the Rent Control Court

that the petitioner/landlord is entitled to get an order of eviction under Section 11(4)(i) of the Act has to be restored, reversing the finding of the appellate authority that the petitioner is not entitled to have an order of eviction under Section 11(4)(i) of the Act.

In the result, allowing the civil revision petition, we restore the order of eviction passed by the Rent Control Court under Section 11(4)(i) of the Act and direct the respondents to put the petitioner in vacant possession of the scheduled building within one month from today.

(J.B.Koshy, Judge)

19th June, 2007

(K.P.Balachandran, Judge)

tkv

J.B.Koshy & K.P.Balachandran, JJ.

C.R.P.No.

ORDER

19th June, 2007